Orleans & Texas Ry. Co., 70 Miss. 563, 12 So. 586. In the principal case the question whether the courtesy had become a duty, owing to exceptional circumstances, should have been left to the jury. *Citizens Street Ry. Co.* v. *Shepherd*, 29 Ind. App. 412, 62 N. E. 300. If it had been answered in the affirmative, the carrier would have been liable for failing to perform such duty with due care.

CARRIERS — WHO ARE COMMON CARRIERS — EXCLUSIVE SERVICE TO COKE PLANT. — The defendant, an independent company organized under a general railroad act, operated a network of switch tracks wholly within the premises of a coke corporation. Its sole business consisted in shifting cars for the coke corporation between the plant and two connecting belt lines, such cars coming from and going to places in different states. The plaintiff seeks damages for injuries received in the defendant's employ, charging the latter with violation of the federal Safety Appliance Act. *Held*, that the defendant is a common carrier engaged in interstate commerce and liable for violation of the federal Safety Appliance Act. *Kenna* v. *Calumet, H. & S. E. R. Co.*, 120 N. E. 259 (Ill.).

A common carrier is defined as one who undertakes for hire to transport from place to place the goods of such as choose to employ him. *Illinois Central R. R.* v. *Frankenberg*, 54 Ill. 88; *Lloyd* v. *Haugh, etc. Storage, etc. Co.*, 223 Pa. 148, 72 Atl. 516. See 1 HUTCHINSON, CARRIERS, 3 ed., § 47; STORY, BAILMENTS, 7 ed., § 495. Whether the one charged as a common carrier is within this definition is a question of fact for the jury. *Schloss* v. *Wood*, 11 Colo. 287, 17 Pac. 910; *Collier* v. *Langan, etc. Storage, etc. Co.*, 147 Mo. App. 700, 127 S. W. 435; *Avinger* v. *South Carolina R. R. Co.*, 29 S. C. 265, 7 S. E. 493; *The Tap Line Case*, 23 I. C. C. 277. In the principal case, it does not appear that the defendant held itself out for purposes of general transportation. Its only business consisted in switching cars for the coke corporation between the plant and the belt railroads. If this system of internal trackage had been operated by the coke corporation itself, such system, as the court admits, would have constituted a mere plant facility. *Wade* v. *Lutcher & Moore Cypress Lumber Co.*, 20 C. C. A. 515, 74 Fed. 517; *Taenzer & Co.* v. *Chicago, R. I. & P. R. Co.*, 95 C. C. A. 436, 170 Fed. 240; *General Electric Co.* v. *N. Y. C. & H. R. R. Co.*, 14 I. C. C. 237. The fact that the system was operated by an independent corporation does not alter its character. *Crane Iron Works* v. *U. S.*, 1 U. S. Com. Ct. 453, 209 Fed. 238; *In re Muncie & Western R. Co.*, 30 I. C. C. 434. Furthermore, the railroad was not even a public utility, for since its lines were wholly within the premises of the coke corporation it was not accessible to the general public. *Cf. Matter of the Split Rock Cable Road*, 128 N. Y. 408, 28 N. E. 506; *Weidenfeld* v. *Sugar Run R. Co.*, 48 Fed. 615 (U. S. C. C., Pa.). Nor could organization under the general railroad act clothe the business with a public interest; the facts alone could give it that character. *Munn* v. *Illinois*, 94 U. S. 113; *People* v. *Budd*, 117 N. Y. 1, 22 N. E. 670; *Brass* v. *North Dakota*, 153 U. S. 391. Unless by accepting the benefits of the act, the defendant was estopped to show that it was not a common carrier, the decision seems wrong. See *Turnpike Co.* v. *News Co.*, 43 N. J. L. 381; *Chicago, M. & St. P. R. Co.* v. *Ackley*, 94 U. S. 179.

CONFLICT OF LAWS — WILLS — EQUITABLE ELECTION. — Testatrix died domiciled in England, having devised realty in Paraguay upon trust for charity. By the law of Paraguay this devise was valid only as to one-fifth, four-fifths being the legal portion of the obligatory heirs. These heirs were also legatees of property situated in England. Though under the Paraguayan law the obligatory heirs took both under and against the will and were not required to elect, yet, *held*, that they must elect. *In re Ogilvie*, [1918] 1 Ch. 492.

When A makes B, his heir, and C legatees under his will, and the legacy to

C is such that B, as heir, would be entitled thereto, B cannot take both his legacy and C's intended portion, but must elect between the two. *Van Dyke's Appeal*, 60 Pa. St. 481. See 23 HARV. L. REV. 138. Where the gift to C is invalid, by the *lex domicilii*, there is no will and consequently no election. *Hearle* v. *Greenbank*, 1 Ves. Sen. 298, 306; *Sheddon* v. *Goodrich*, 8 Ves. Jr. 481. See *Boughton* v. *Boughton*, 2 Ves. Sen. 12, 14. If, however, there is an express condition to elect, it is enforced. *Boughton* v. *Boughton*, *supra*. But where it is inoperative because of *lex rei sitae* of a foreign jurisdiction election is applied. *Dundas* v. *Dundas*, 2 Dow & Cl. 349; *Brodie* v. *Barry*, 2 Ves. & Beav. 127; *Van Dyke's Appeal*, *supra*. See 2 DICEY, CONFLICT OF LAWS, 2 ed., 778, 779. The election, however, when made, does not affect the title to the foreign realty. *Bolton* v. *Bolton*, 29 Ark. 418; *Ramels* v. *Rowe*, 92 C. C. A. 177, 166 Fed. 425; *Palmer* v. *Voorhis*, 35 Barb. (N. Y.) 479. See STORY, CONFLICT OF LAWS, 8 ed., § 448. Yet it is generally enforced by the jurisdiction of the situs. *Van Steenwyck* v. *Washburn*, 59 Wis. 483, 17 N. W. 289; *Martin* v. *Battey*, 87 Kan. 582, 125 Pac. 88; *Wilson* v. *Cox*, 49 Miss. 538. *Contra*, *Ramels* v. *Rowe*, *supra*. Some suggest that the doctrine rests simply on equitable principles. See 30 HARV. L. REV. 649; 1 JARMAN, WILLS, 6 ed., 534; 1 POMEROY, EQUITY, 3 ed., § 465. But see *Cooper* v. *Cooper*, L. R. 7 H. L. 53, 70. This view would not change the result in the principal case, for in an analogous situation, where B's property was given to C, B had to elect. *Noys* v. *Mordant*, 2 Vern. 581; *Cooper* v. *Cooper*, *supra; Havens* v. *Sackett*, 15 N. Y. 365. But the prevailing view is that it is based on the presumed intention of the testator. *Whistler* v. *Webster*, 2 Ves. Jr. 366; *Jackson* v. *Bevins*, 74 Conn. 96, 49 Atl. 899; *Cooper* v. *Cooper*, *supra; Havens* v. *Sackett*, *supra; Martin* v. *Battey*, *supra*. See Haynes, "Outlines of Equity," 262 *et seq.*, 23 HARV. L. REV. 138. And it seems, as is said in the principal case, that election is merely the application of the *lex domicilii* imposing conditions on the receipt of the legacy over which it has power. Thus it is a mere rule of construction, enforcing the presumed intention of the testator.

CONTRACTS — CONTRACTS FOR THE BENEFIT OF A THIRD PERSON — CHARTERPARTIES — RIGHT OF CHARTERERS TO RECOVER COMMISSION FROM SHIPOWNERS AS TRUSTEES FOR BROKERS. — A clause in a charterparty provided that a three per cent commission on the amount of hire should be paid to the brokers, "ship lost or not lost." No hire was earned, since the vessel was taken over by the French government. *Held*, that the charterers could recover the commission as trustees for the brokers. *Walford* v. *Les Affréteurs Réunis Société Anonyme*, [1918] 2 K. B. 498.

The English courts have in the past been obliged to stretch the law of trusts in order to avoid the consequences of their doctrine, which prevails in a small minority of American jurisdictions, that a person not a party to a contract cannot sue on a promise made for his benefit. *Moore* v. *Darton*, 4 DeG. & S. 517. See 15 HARV. L. REV. 767, 775. Various efforts have been made to evade the rule. See *Mellen* v. *Whipple*, 1 Gray (Mass.) 317, 323. The device of an implied trust has been employed in a number of cases. *Swan* v. *Snow*, 11 Allen (Mass.) 224; *Munroe* v. *Fireman's Relief Association*, 19 R. I. 363, 34 Atl. 149; *Lloyds* v. *Harper*, 16 Ch. D. 290; *In re Flavell*, 25 Ch. D. 89; *contra*, *West* v. *Houghton*, 4 C. P. D. 197. See *Cleaver* v. *Mutual Reserve Fund*, [1892] 1 Q. B. 147, 152. The principal case follows a similar decision in regard to charter parties handed down without opinion in 1853. *Robertson* v. *Wait*, 8 Exch. 299. Perhaps most of the English cases can be reconciled in result, if not on principle, on the ground that where a business relation exists between promisee and beneficiary an agreement by the promisee to act as trustee of his technical right of action can be implied, but not in cases of pure gifts. Certainly there is strong reason in business contracts to find some way of enforcement. The whole